

REMARKS

The Non-final Office Action mailed October 12, 2007 has been received and reviewed. Each of claims 1-38 stands rejected. No claims have been added or amended. Accordingly, claims 1-38 remain pending. Reconsideration of the above-identified application in view of the above amendments and the following remarks is respectfully requested.

Disqualification of prior art reference under 35 U.S.C. § 103(c)(1).

Applicants respectfully assert that U.S. Publication Number 2004/0098286 to Zimmerman et al. (hereafter the "Zimmerman reference") is disqualified as a 35 U.S.C. § 103(a) reference under 35 U.S.C. § 103(c)(1).

A. Applicable Authority

35 U.S.C. § 103(c)(1) states:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

B. The Zimmerman reference only qualifies as prior art under 102(e)

The Zimmerman reference does not qualify a prior art under 102(a) or (b) because the publication date of the Zimmerman reference, May 20, 2004, is after the January 2, 2004, filing date of the present application. Thus, Zimmerman only qualifies as prior art under 35 U.S.C. § 102(e).

C. Statement Establishing Common Ownership

The undersigned attorney of record hereby states that both the invention of the present application and the subject matter of the Zimmerman reference were, at the time the

present invention was made, owned by or subject to an obligation of assignment to Cerner Innovations, Inc. Accordingly, the Zimmerman reference is disqualified under 35 U.S.C. § 103(c)(1).

Rejections based on 35 U.S.C. § 103(a)

Claims 1-38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number 5,682,728 to DeBusk et al. (hereinafter “DeBusk reference”) in view of the Zimmerman reference. Applicants respectfully traverse the rejection, as hereinafter set forth. As explained above, the Zimmerman reference is disqualified for use as a 35 U.S.C. § 103(a) reference. Accordingly, reliance on the Zimmerman reference to form a 35 U.S.C. § 103(a) rejection is inappropriate. Thus, the present U.S.C. § 103(a) rejection of claims 1-38 should be withdrawn as it is based on an inappropriate reference.

CONCLUSION

For at least the reasons stated above, claims 1-38 are now in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or ddevers@shb.com (such communication via email is herein expressly granted) – to resolve the same.

The requisite fee for the one-month extension of time is submitted herewith. It is believed that no additional fee is due, however, the Commissioner is hereby authorized to charge any amount required, or credit any over payment, to Deposit Account No. 19-2112, referencing attorney docket number CRN1.111423.

Respectfully submitted,

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